

LICENSING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses proposed and existing regulated occupations.

Highlighted Provisions:

This bill:

- ▶ creates the Office of Occupational and Professional Licensure Review (office);
- ▶ defines terms;
- ▶ requires the office to:
 - conduct a sunrise review for each application to establish a new regulated occupation;
 - review each regulated occupation at least once every 10 years; and
 - review and respond to each legislator inquiry regarding an occupational licensing matter;
- ▶ establishes criteria for conducting a sunrise review or periodic review;
- ▶ provides legislative oversight of the scheduling and scope of each periodic review;
- ▶ requires the office to annually prepare and submit a written report to the Business and Labor Interim Committee;
- ▶ provides a sunset date for provisions of this bill, subject to review; and
- ▶ repeals the Occupational and Professional Licensure Review Committee Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-213, as last amended by Laws of Utah 2021, Chapter 26

ENACTS:

13-1b-101, Utah Code Annotated 1953

33 **13-1b-102**, Utah Code Annotated 1953
34 **13-1b-103**, Utah Code Annotated 1953
35 **13-1b-201**, Utah Code Annotated 1953
36 **13-1b-202**, Utah Code Annotated 1953
37 **13-1b-203**, Utah Code Annotated 1953
38 **13-1b-301**, Utah Code Annotated 1953
39 **13-1b-302**, Utah Code Annotated 1953
40 **13-1b-303**, Utah Code Annotated 1953
41 **13-1b-304**, Utah Code Annotated 1953

42 REPEALS:

43 **36-23-101**, as enacted by Laws of Utah 1999, Chapter 152
44 **36-23-101.5**, as last amended by Laws of Utah 2019, Chapter 276
45 **36-23-102**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307
46 **36-23-103**, as last amended by Laws of Utah 2013, Chapter 323
47 **36-23-104**, as last amended by Laws of Utah 2014, Chapter 387
48 **36-23-105**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307
49 **36-23-106**, as last amended by Laws of Utah 2018, Chapter 281 and last amended by
50 Coordination Clause, Laws of Utah 2018, Chapter 307
51 **36-23-107**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307
52 **36-23-108**, as enacted by Laws of Utah 1999, Chapter 152
53 **36-23-109**, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307
54 **58-1-110**, as enacted by Laws of Utah 2013, Chapter 323

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56 *Be it enacted by the Legislature of the state of Utah:*

57 Section 1. Section **13-1b-101** is enacted to read:

58 **CHAPTER 1b. OFFICE OF OCCUPATIONAL AND PROFESSIONAL**
59 **LICENSURE REVIEW**

60 **Part 1. General Provisions**

61 **13-1b-101. Title.**

62 This chapter is known as the "Office of Occupational and Professional Licensure
63 Review."

Section 2. Section **13-1b-102** is enacted to read:

13-1b-102. Definitions.

As used in this chapter:

(1) "Department" means the Department of Commerce.

(2) "Director" means the director of the office.

(3) "Executive director" means the executive director of the Department of Commerce.

(4) "Government requestor" means:

(a) the governor;

(b) an executive branch officer other than the governor;

(c) an executive branch agency;

(d) a legislator; or

(e) a legislative committee.

(5) "Health, safety, or financial welfare of the public" includes protecting against physical injury, property damage, or financial harm of the public.

(6) "License" or "licensing" means a state-granted authorization for a person to engage in a specified occupation:

(a) based on the person meeting personal qualifications established under state law;

and

(b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.

(7) "Newly regulate" means to create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation.

(8) "Occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not illegal to sell, irrespective of whether the individual selling the goods or services is subject to an occupational regulation.

(9) "Office" means the Office of Occupational and Professional Licensure Review created in this chapter.

(10) "Periodic review" means a review described in Subsection 13-1b-203(2).

(11) (a) "Personal qualifications" means criteria established in state law related to an individual's background.

(b) "Personal qualifications" includes:

(i) completion of an approved education program;

(ii) satisfactory performance on an examination;

(iii) work experience; and

(iv) completion of continuing education.

(12) "Regulated occupation" means an occupation that:

(a) requires a person to obtain a license to practice the occupation; or

(b) provides for state certification or state registration.

(13) "State certification" means a state-granted authorization given to a person to use the term "state certified" as part of a designated title related to engaging in a specified occupation:

(a) based on the person meeting personal qualifications established under state law;

and

(b) where state law prohibits a noncertified person from using the term "state certified" as part of a designated title but does not otherwise prohibit a noncertified person from engaging in the occupation for compensation.

(14) "State registration" means a state-granted authorization given to a person to use the term "state registered" as part of a designated title related to engaging in a specified occupation:

(a) based on the person meeting requirements established under state law, which may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and bond or insurance requirements;

(b) where state law does not require the person to meet any personal qualifications; and

(c) where state law prohibits a nonregistered person from using the term "state registered" as part of a designated title.

(15) "Sunrise review" means a review under this chapter of an application to establish a new regulated occupation.

Section 3. Section **13-1b-103** is enacted to read:

13-1b-103. Applicability.

This chapter applies to any regulation of an occupation that is administered by a state executive branch agency.

Section 4. Section **13-1b-201** is enacted to read:

Part 2. Organization

13-1b-201. Creation of office -- Director appointed -- Personnel.

(1) There is created within the department the Office of Occupational and Professional Licensure Review to perform the functions and duties described in this chapter.

(2) The office is under the direction and control of a director appointed by the executive director with approval of the governor.

(3) The executive director shall establish the salary of the director in accordance with standards established by the Division of Human Resource Management.

Section 5. Section **13-1b-202** is enacted to read:

13-1b-202. Powers of the director and the office.

(1) The director may employ personnel necessary to carry out the duties and responsibilities of the office at salaries determined by the executive director in accordance with standards established by the Division of Human Resource Management.

(2) The office may:

(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the responsibilities of the office described in this chapter, including rules creating criteria for conducting a sunrise review or a periodic review;

(b) make recommendations to other state executive branch agencies regarding regulated occupations; and

(c) survey stakeholders regarding appropriate criteria for conducting a sunrise review or a periodic review.

(3) A state executive branch agency may adopt or reject a recommendation described in Subsection (2)(b).

Section 6. Section **13-1b-203** is enacted to read:

13-1b-203. Duties.

The office shall:

(1) for each application submitted in accordance with Section 13-1b-301, conduct a sunrise review in accordance with Section 13-1b-302 before November 1:

(a) of the year in which the application is submitted, if the application is submitted on or before July 1; or

(b) of the subsequent year, if the application is submitted after July 1;

(2) beginning in 2023 and in accordance with Section 13-1b-303, conduct a review of each regulated occupation at least once every 10 years;

(3) review and respond to any legislator inquiry regarding a proposed or existing regulated occupation; and

(4) report to the Business and Labor Interim Committee in accordance with Section 13-1b-304.

Section 7. Section **13-1b-301** is enacted to read:

Part 3. Office Review and Reporting

13-1b-301. Application for sunrise review -- Fees.

(1) If a government requestor or a representative of an occupation that is not a regulated occupation proposes that the state make the occupation a regulated occupation, the government requestor or representative shall, before the introduction of any proposed legislation, submit to the office an application for sunrise review in a form the office prescribes.

(2) The application described in Subsection (1) shall describe:

(a) why making the occupation a regulated occupation is necessary to protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public; and

(b) the least restrictive regulation of the occupation that would protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public.

(3) If a representative of an occupation submits an application in accordance with this section, the application shall include a nonrefundable fee of \$500.

(4) All application fees collected under this section shall be deposited into the General Fund.

Section 8. Section **13-1b-302** is enacted to read:

13-1b-302. Review criteria.

In conducting a sunrise review or a periodic review, unless otherwise directed in accordance with Subsection 13-1b-203(3), the office shall consider the following criteria:

(1) whether the regulation of the occupation is necessary to address a present, recognizable, and significant harm to the health, safety, or financial welfare of the public;

(2) for any harm to the health, safety, or financial welfare of the public, the harm's:

- 188 (a) severity;
189 (b) probability; and
190 (c) permanence;
191 (3) the extent to which the proposed or existing regulation of the occupation protects
192 against or diminishes the harm described in Subsection (1);
193 (4) whether the proposed or existing regulation of the occupation:
194 (a) affects the supply of qualified practitioners;
195 (b) creates barriers to:
196 (i) service that are not in the public financial welfare or interest; or
197 (ii) entry into the occupation or related occupations;
198 (c) imposes new costs on existing practitioners;
199 (d) affects:
200 (i) license reciprocity with other jurisdictions; or
201 (ii) mobility of practitioners; or
202 (e) if the occupation involves a health care provider, impacts the health care provider's
203 ability to obtain payment of benefits for the health care provider's treatment of an illness,
204 injury, or health care condition under an insurance contract subject to Section 31A-22-618;
205 (5) if the review involves licensing, the potential alternative pathways for a person to
206 obtain a license;
207 (6) the costs to the state of regulating the occupation;
208 (7) whether the proposed or existing administering agency has sufficient expertise and
209 resources;
210 (8) the regulation of the occupation in other jurisdictions;
211 (9) the scope of the proposed or existing regulation, including:
212 (a) whether the occupation is clearly distinguishable from an already regulated
213 occupation; and
214 (b) potential for regulating only certain occupational activities;
215 (10) the potentially less burdensome alternatives to the proposed or existing regulation
216 and the effect of implementing an alternative method of regulation on:
217 (a) the health, safety, or financial welfare of the public;
218 (b) the occupation; and

219 (c) practitioners of the occupation; and
220 (11) any other criteria the office adopts, including criteria suggested in a stakeholder
221 survey.

222 Section 9. Section **13-1b-303** is enacted to read:

223 **13-1b-303. Legislative prioritization of reviews.**

224 (1) Before October 1 of each year, the office shall prepare and submit to the Business
225 and Labor Interim Committee a list of each periodic review that the office proposes to conduct
226 during the upcoming year, including the scope of each periodic review.

227 (2) Before December 1 of the calendar year in which the office submits a list under
228 Subsection (1), the Business and Labor Interim Committee shall:

229 (a) approve the list, with or without modification; and

230 (b) submit a copy of the approved list to the Legislative Management Committee for
231 approval, with or without modification.

232 Section 10. Section **13-1b-304** is enacted to read:

233 **13-1b-304. Reporting.**

234 (1) Beginning in 2024, before October 1, the office shall annually prepare and submit a
235 written report to the Business and Labor Interim Committee that describes the office's work
236 during the prior year.

237 (2) In a written report described in Subsection (1), the office shall include:

238 (a) a summary of each periodic review, each sunrise review, and each response to a
239 legislator inquiry; and

240 (b) each recommendation the office made to another state executive branch agency
241 regarding a regulated occupation.

242 Section 11. Section **63I-1-213** is amended to read:

243 **63I-1-213. Repeal dates, Title 13.**

244 (1) Title 13, Chapter 1b, Office of Occupational and Professional Licensure Review, is
245 repealed July 1, 2034.

246 [†] (2) Section 13-32a-112, which creates the Pawnshop and Secondhand
247 Merchandise Advisory Board, is repealed July 1, 2027.

248 [‡] (3) Section 13-35-103, which creates the Powersport Motor Vehicle Franchise
249 Advisory Board, is repealed July 1, 2022.

250 ~~[(3)]~~ (4) Section 13-43-202, which creates the Land Use and Eminent Domain
251 Advisory Board, is repealed July 1, 2026.

252 Section 12. **Repealer.**

253 This bill repeals:

254 Section **36-23-101, Title.**

255 Section **36-23-101.5, Definitions.**

256 Section **36-23-102, Occupational and Professional Licensure Review Committee.**

257 Section **36-23-103, Committee terms -- Vacancies.**

258 Section **36-23-104, Committee meetings -- Compensation -- Quorum -- Legislative**
259 **rules.**

260 Section **36-23-105, Applications -- Fees.**

261 Section **36-23-106, Duties -- Reporting.**

262 Section **36-23-107, Sunrise or sunset review -- Criteria.**

263 Section **36-23-108, Staff support.**

264 Section **36-23-109, Review of state regulation of occupations.**

265 Section **58-1-110, Legislative review in Title 58, Occupations and Professions.**